

.STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-806

March 6, 2002

WPS ENERGY SERVICES, INC.
Petition for Imposition of Standard Offer
Opt-Out Fee in Northern Maine

ORDER ADOPTING
OPT-OUT FEE IN
NORTHERN MAINE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we make the opt-out fee provisions of Chapter 301 applicable to customers in northern Maine.

II. BACKGROUND

On November 16, WPS Energy Services, Inc. (WPS) filed a petition, pursuant to Chapter 301, § 2(C)(3)(b), for the Commission to impose a standard offer opt-out fee in northern Maine. WPS is the Commission-designated standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory through February 29, 2004. Chapter 301 contains opt-out fee provisions for the purpose of deterring strategic gaming of standard offer service. These provisions, however, do not currently apply to customers in northern Maine.

WPS asks the Commission to impose an opt-out fee due to its belief that a significant number of commercial and industrial customers in MPS's service territory are switching from competitive service to standard offer service and back in response to market conditions. Specifically, WPS states that in July and August 2001, approximately 10 MW of load was taking competitive service. That number dropped to 0 in September and WPS observed an increase in standard offer load. In October 2001, the load on competitive service jumped to approximately 6-8 MW. WPS states that standard offer gaming, if it is occurring, exposes it to significant additional costs as the standard offer supplier.

On November 27, 2001, the Commission requested that MPS provide it with customer movement data and also provided interested persons with the opportunity to comment on the WPS petition.

On December 6, 2001, Energy Atlantic LLC (EA) filed comments opposing the imposition of opt-out fees in northern Maine on the grounds that there is no evidence of gaming in the northern Maine market. EA states that the transfer of customers from the competitive market to the standard offer during the timeframe cited by WPS was not the result of gaming. EA states that it had approximately 10 MW of retail load under

contract through August 2001, but did not have a wholesale supplier when the contracts expired by their own terms. As a result, its customers defaulted to the standard offer when their contracts expired. Thus, according to EA, these customers left the competitive market for standard offer not for strategic reasons, based on relative economics, but due to the lack of competitive alternatives. Because customers were not attempting to “time” the market, EA argues that the circumstances described in the WPS petition do not warrant the imposition of an opt-out fee in northern Maine. In addition, EA argues that any costs to WPS resulting from the lack of an opt-out fee should be accounted for in its standard offer price in that the absence of the fee was known at the time standard offer bids were submitted.

On December 31, 2001, WPS responded to the EA comments by stating that, in the absence of an opt-out fee, there is an economic rationale for customers or competitive electricity providers (CEP) to shift load from competitive service to standard offer service and back to competitive service based on relative prices. WPS explains that this could happen during the term of a CEP contract if the price terms are not firm or at the end of fixed-price contracts. WPS states that such shifting is entirely for economic reasons and imposes additional costs and risks on the standard offer provider. WPS argues that that an opt-out fee should be imposed to minimize the use of the standard offer as a no cost price ceiling.

III. DECISION

For the reasons discussed below, we make Chapter 301’s opt-out fee provisions (section 2 (C)(2)) applicable to service in northern Maine pursuant to section 2(C)(3)(b) of the rule. The opt-out fee provisions will apply to northern Maine customers who leave the competitive market to take standard offer service on or after May 1, 2002.¹

Section 2(C) of Chapter 301 contains the opt-out fee provisions applicable to standard offer service. These provisions require customers that take standard offer service after having obtained service from the competitive market to either remain on standard offer service for 12 months or pay an opt-out fee (equal to two times the customer’s highest standard offer bill) upon return to the competitive market. The purpose of the opt-out fee is to deter the strategic entry and exit onto and off of the standard offer. *Order Provisionally Adopting Rule and Statement of Policy Basis*, Docket No. 97-739 at 8 (February 11, 1998). Such action, often referred to as gaming the standard offer, occurs when customers take advantage of the standard offer’s fixed prices by moving on and off of the service as prevailing market prices rise and fall.

We exempted northern Maine from the opt-out fee provisions when we amended the standard offer rule in August 2000. At that time, we limited the application of the opt-out fee to customers who returned to standard offer service in the summer months.

¹ The delay in applying the opt-out fee to northern Maine is to allow the Commission and CEPs time to educate customers as to the existence and operation of the opt-out fee.

This was done based on the perception that the primary opportunity for gaming the standard offer occurs in the summer months when prices in New England tend to be high and volatile. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2000-489 at 3-5 (August 16, 2000). We did not apply the new opt-out fee provisions to customers in northern Maine, because the northern Maine market does not peak in the summer and we had not observed the volatility that would raise gaming concerns. *Id.* We did, however, include a provision in the rule that would allow us to reinstate by order mechanisms in northern Maine to deter frequent movement in and out of the standard offer upon a finding of good cause.

In January 2001, we amended the rule to revert to the original opt-out fee structure, in which the provisions apply regardless of when during the year the customer takes standard offer service. This change was implemented to deter gaming the standard offer that could occur through entry onto the service in the non-summer months more effectively. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2000-904 at 3-4 (January 24, 2001). The amended rule maintained the northern Maine exemption, as well as the provision allowing the Commission to impose a fee for the region if market conditions warrant. *Id.*

We have recently had the opportunity to further define the purposes of the opt-out fee in the context of an opt-out fee waiver request. In that case, we stated:

The opt-out fee provisions were adopted to prevent customers from switching to standard offer service when prices are below market and returning to a competitive supplier when the price relationship reverses. Although, in this case, the switch to standard offer service occurred upon the early termination of a contract, this would also apply if a customer returned to standard offer service after the natural end of a contract term. As stated earlier, standard offer service is not a free option that customers or suppliers can exercise based on the relative economics of the market. Rather, for customers who have entered the competitive market, standard offer is a safety net when they need supply for a relatively short period of time, generally for reasons that are beyond their control or inadvertent. We expect customers who enter the competitive market to remain there; such customers are allowed to switch to standard offer service for economic reasons, but if they do so, they must stay there for 12 months or pay an opt-out fee.

Order Denying Request for Opt-Out Fee Waiver, Docket No. 2001-549 at 3-4 (Nov. 7, 2001). Thus, we have clarified that the standard offer should not be viewed as a no cost option to be used by customers (or CEPs) based on the relationship of standard offer and market prices, and that customers who have entered the competitive market should not return to standard offer for relative price considerations. If they do so, they must be willing to remain on standard offer for 12 months or pay an opt-out fee.

Based on the articulation of the purposes of the opt-out fee as discussed above, we find that it is no longer appropriate for the northern Maine market to have different rules with respect to entry onto and exit from the standard offer. Although northern Maine market prices are not as volatile as the New England market, the comments presented in this proceeding demonstrate that prices in northern Maine vary sufficiently to create circumstances where the strategic use of standard offer service could be worthwhile unless deterred through a mechanism such as an opt-out fee. This price variability, in our view, justifies the imposition of the opt-out fee in northern Maine. Additionally, in response to EA's argument that the risks of frequent transfers should have been included in WPS's standard offer price, we note that although an opt-out fee was not in effect at the time WPS bid on standard offer, the rule did allow for the imposition of the fee if circumstances warranted. To conclude, we emphasize that our decision to apply the opt-out fee to the northern Maine market is not the result of a view that any market participant in northern Maine has acted inappropriately. Rather, our decision is based solely on a review of the purposes of the opt-out fee in light of market conditions in northern Maine.

Accordingly, it is

ORDERED

That the opt-out fee provisions contained in Chapter 301, § 2(C)(2) shall apply to customers taking service in northern Maine who leave competitive service and take standard offer service after May 1, 2002.

Dated at Augusta, Maine, this 6th day of March, 2002.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.